

## Background of Parental Rights in Education & Current Challenges in Canada

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In the following paper, we will examine several situations across Canada where the responsibility of parents for the education of their children has been challenged by provincial governments. We will elaborate on cases in Quebec, Ontario and British Columbia where this has occurred and where parents have responded by challenging the authority of the state in the matter of religious education or controversial moral content in various areas of the curriculum. While these are by no means the only subjects where parental wishes might be ignored or minimized, they tend to be where matters will come to a head.

Before we consider these, let us briefly review parental rights in education. Parents are considered responsible for the education of their children as a matter of natural law as well as civil law and custom. This right and responsibility is spelled out in international protocols as well as Church documents. For example, the UN Universal Declaration of Human Rights states: “Parents have a prior right to choose the kind of education that shall be given to their children” (Article 26, # 3). This right is also referenced in the Declaration on the Rights of the Child and in the constitutions of many countries. With respect to religious and moral education, in particular, John Paul II recognized the importance of an objective knowledge of religions, but he also affirmed the duty of public schools to make room for the presence of a true teaching of religion within its walls. The [Second Vatican Council](#) reminds us: “Parents have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive [...].The right of parents are violated, if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs, or if a single system of education, from which all religious formation is excluded, is imposed upon all” (Declaration [Dignitatis humanae](#) [DH] 5; cf. c. 799 CIC; Holy See, [Charter of the rights of the family](#), 24 November 1983, art. 5, c-d). (1)

Justice LaForest, now retired of the Supreme Court of Canada, wrote that Canada recognizes and supports that parents are in the best position to take care of their children and determine what is best for them. He said this in his decision in [B\(R\) v. Children's Aid Society](#) and in the context of determining that s.2(a) of the *Charter* includes the right of parents to raise their children in conformity with the parents' religious beliefs. (That difficult case involved whether Jehovah's Witness parents could withhold lifesaving medical care from a child for religious reasons).

“Parents bear responsibilities towards their children and must enjoy corresponding rights to exercise those responsibilities. Parents are in a privileged role in this regard. They are uniquely positioned to know and gauge their children's needs and abilities. In the result, the courts have recognized that parents are constitutionally protected when it comes to the moral and religious upbringing of their children.

“The public school system is one in which, almost inevitably, there will be some conflict between the various belief systems of parents. As noted by Justice Gonthier in [Chamberlain v. Surrey School District](#), the *Charter* should not be used to negate one set of beliefs when they conflict, whether popular or

unpopular. The acceptable resolution is accommodating the needs of individual children and families participating in public education. (LexView, March, 2012)

Now let us look at specific cases.

Let's begin with Quebec, to date the only province where parental objections to a mandatory school course have led to a Supreme Court challenge. In 2008, Quebec introduced the Ethics and Religious Culture course to replace Catholic, Protestant and non-sectarian moral instruction in elementary and secondary schools, public and private. In 2009, two parents supported by a group of many more brought a case in Quebec Superior Court when their requests to exempt their children from the course were denied. (Other cases had been initiated by other parents, in which the Ministry responded by demanding that children be compelled to attend such classes.) The parents argued that the compulsory course violated their religious convictions, as the nature of the course in presenting a relativistic approach to religious views conflicted with their Roman Catholic understanding of truths asserted by the faith. The case highlighted many of the concerns Catholic and other parents had been expressing since the course was announced several years earlier. In total, roughly 2,000 such applications for exemptions had been submitted by Quebec parents. All were refused. At that point some parents removed their children from the class, but faced various sanctions including suspension of the students. Many parent groups looked for ways to support families in their request for an exemption from the course.

Objections focused on the introduction at a young age of material that contradicted parents' religious teachings, the lack of choice, and the denial of parental rights. As one of CCRL's directors said, "It is the state deciding what religious content will be learned, and at what ages, which totally usurps the parents' authority and role." (2)

By refusing to allow exemptions or make the course optional, the state was essentially foisting one belief system on students and their families. From the time the controversy began, polls consistently found that more than 70 per cent of all Quebecers supported giving parents the choice of the new course, or the traditional Catholic and Protestant options.

With the support of a number of religious and civil liberties associations, the case was appealed to the Supreme Court of Canada, which ruled in February 2012 that it would not grant the right to an exemption, stating that the Appellants could not meet the evidentiary burden of how the course was delivered to support a finding of interference with their right to religious freedom. It should be noted that part of the reason that evidentiary burden could not be met was because the parents had removed their two children (one of whom was six years old when the program was introduced) from the course; also, the case began prior to the original initiation of the course, so the appellants could only submit what was available at the time.

In effect, the court has asserted that all Quebec parents (including the more than 2,000 parents who sought such exemptions) must expose their children to this course obtain an evidentiary record for their concerns or their allegations, and return to the process of seeking an exemption from their local school board.

The Supreme Court left open the possibility that such an application with the proper evidentiary support could be mounted in the future. Nevertheless, the assumption that the state can impose a course on

religious topics and make it mandatory sets a precedent that could be applied in other provinces when parents believe their rights have been over-ruled.

In Ontario, it's possible we will not have to wait long for such a challenge, given the June 5 passage of Bill 13, the Accepting Schools Act, 2012, after a great deal of input from parent and education groups, much of it critical of some aspects of the bill. Presented as a strategy for combatting bullying in schools, Bill 13 is an amendment to the Education Act stipulating that schools must have strategies in place to discipline repeated bullying, and that efforts must be made to prevent it.

Its more objectionable provisions have introduced the notion of gender as a social construct in the preamble, to include the "LGBTTIQ" categories of sexual orientation (lesbian, gay, bisexual, transgendered, transsexual, two-spirited, intersex, queer and questioning), have provided broad rights of the Minister of Education to impose policies in this regard, and in perhaps the most notable provision says that all schools, Catholic or public, must make Gay-Straight Alliances, by that name, available if students request them.

The GSA movement has its origins in the United States and some of its history is well-known. It has been associated with efforts to make homosexual conduct acceptable on the same basis as heterosexual relations. Most Catholic educators and parents recognize that anti-bullying initiatives cannot be placed in Catholic schools without clear and consistent clarification and modifications to make such clubs conform to Catholic teaching on sexuality. And yet leaders in the gay rights movement have made it clear they are prepared to take Catholic schools to court if they refuse a request to sanction a Gay-Straight Alliance. (3) As of this writing, the Ontario bishops and Catholic school trustees have said they will obey the law.

There is a great deal more that could be written about the problem of the so-called gay rights agenda making inroads into the school system. Research shows that the leading causes of bullying are much as they have always been: body image (such as weight, speech impediments, accents, acne), intellectual aptitude and generally "not fitting in", with sexual orientation barely even registering. (4) Nor is there any basis for a claim that any such bullying is worse in Catholic schools than in non-sectarian ones.

Given that everyone opposes bullying, and that equality and respect for all are central to Christianity, there should be no problem implementing a comprehensive anti-bullying policy in any school, especially Catholic schools. Opposition MPP Elizabeth Witmer's Bill 14 included anti-bullying policies as strong as anything in Bill 13, and also contained provisions for requiring accountability of schools in terms of documenting what progress they are making against bullying.

As significant as all these mitigating facts are, for our purposes here today we should be most concerned that a minority government was able to pass a bill that almost all parent groups spoke out against; that was the subject of more than 10,000 signatures on a petition and several protest rallies, and in fact the government was quite open about the fact that the concerns of religious groups were unimportant to them.

During debates in the Legislature, statements from members of the Liberal government's cabinet were in the extreme. Glen Murray, Minister of Training, Colleges and Universities, stated "I have to say to the bishops: You're not allowed to do that anymore...I'm not allowed to say to the Catholics – nor should I –

or to other Christians or Muslims or Jews, that because of your faith you're intrinsically disordered." (He was citing Church teaching that homosexual conduct was "intrinsically disordered.") Even allowing for some oratorical flourish, Mr. Murray knew he was speaking on the record, and his remarks were directed at bishops and what can be taught in Catholic schools. There is no record of Premier McGuinty correcting him. (This is quite possibly the first instance where on-the-record comments in a Canadian legislature directed Catholic bishops to stop teaching Catholic doctrine.) Later in the day, speaking to reporters, Industry Minister Kathleen Wynne dismissed the concerns of those who oppose GSAs, stating that "they are not Christian."

For all the controversy this Bill caused during debate, hearings and passage, many parents and even teachers said they were hearing about it for the first time when it passed. Given the existence of legal and cultural support for the rights of parents as the primary educators, it is disheartening to realize how easily parents take it for granted and essentially trust schools to create the curriculum and moral climate that will prevail in their schools. Those parents (including non-Catholics) who believed choosing a Catholic school meant choosing an environment where Catholic teaching will be upheld should realize this may not be the case when it comes to requests for a GSA.

In British Columbia parental rights concerns came to the fore most recently around the subject of mandatory equity policies, which have also been of concern in some other provinces. Typically, any entity receiving public funding is required to post an equity policy stating its commitment to the equitable treatment of all members of the community, and disavowing discrimination on the grounds prohibited by most human rights codes (race, colour, creed, sex, national origin, sexual orientation, etc.) Other than the consistent demands of gay rights advocates, there are few if any cases where any group had an issue with equal treatment. However, many religious groups have been concerned about the impact on family life curriculum and recommended reading lists in an environment of complete equality for sexual orientation. In Burnaby in 2011, a coalition of concerned groups ran candidates for the office of public school trustee, though none were elected. A few years earlier, protests occurred when the ministry of education entered into an originally unpublicized agreement with two homosexual activists to make the curriculum generally more "gay-friendly" and introduce a social justice program (Making Space, Giving Voice) with a strong gay rights component. Many of the teaching aids prepared for these programs gave tips for ways to avoid inculcating "heterosexism", including one example suggesting a trip to a gay film workshop as a worthwhile classroom activity (5). Clearly, these elements go beyond a healthy respect for equality and get into views and beliefs that most religious families do not support.

One result of advocacy efforts is that most boards acknowledged they were expected to accommodate parental concerns to the point of undue hardship, including the right to remove children from certain classes. Very few parents choose to exercise that right. In the absence of reported complaints, it is difficult to know just how well this duty would be honoured in practice.

In conclusion, it's unfortunate that most of the controversies about parental authority in education are sparked by content regarding homosexuality, and that most of the programs involved have been presented as equity policies or anti-bullying programs. This reality puts those who oppose even one or two aspects of a particular program in the unenviable position of appearing to oppose equality or being unsupportive of efforts to combat bullying. Regardless of how carefully a proposal is worded, even the mildest criticism will be dismissed as "homophobic" or worse. Certainly CCRL's brief about Bill 13 emphasized that we support efforts to combat all bullying, including that based on sexual orientation. A spirit of true Christian love for one another is one of the things parents expect when they choose a

Catholic school for their children. Most of the other briefs were similarly supportive of anti-bullying and merely concerned about Bill 13's focus on just one aspect of it. And yet when the submissions were over (and ignored, as it turned out), MPP Cheri DiNovo, an NDP member of the Committee on Social Policy that heard the submissions, speaking of opposition to the bill, advised reporters that "the homophobia was so real." (Ms. DiNovo, and Education Minister Laurel Broten, were co-marshals of the Toronto Pride Parade a few weeks after Bill 13 was passed).

In any event, despite the charge that Christian conservatives are preoccupied with matters of sexual orientation, we should remember that the Quebec case, the most recent one to reach the Supreme Court of Canada, had nothing to do with sex but everything to do with parental rights and religious freedom. As discussed, this case concerned nothing more or less than the right of parents to direct the religious education of their children through the right to an exemption from an ethics and religion course. The state's answer was a firm "no", and the court backed it up by finding their claims erroneous (in the majority) or unproven (in the minority opinion).

Given its precedent-setting value and the fact that our public schools and governments can be hostile to religious concerns, we should all be concerned about the denial of a basic freedom, with the only faintly helpful suggestion being that you keep sending your kids to a program for some unspecified period of time for students and parents to marshal the evidence required to assert "harm" in order to gather proof!

As mentioned above, the one constant in most of these cases is that (with the exception of the Quebec case) relatively few parents get involved with these controversies, even though they say they find some course materials objectionable. Anyone who has raised a family while working for a living knows how difficult it can be to find the time to take on much more, but the reality is activists hostile to traditional beliefs always seem to have the time. There is no disputing that those upholding the rights of parents to direct their children's education are sometimes up against a hostile mindset, but efforts at the grassroots level can bear fruit.

- (1) Recalled in: Circular letter of Cardinal Zenon Golzchewski, prefect of the Congregation for Catholic Education, May 5, 2009.
- (2) CCRL press releases, May 13, 2009
- (3) Coalition pushes for anti-bullying bill to get speedy passage, Toronto Sun, April 2, 2012
- (4) Angus Reid Survey, February 2012, "Many Canadians believe bullying should be considered a crime."
- (5) Out in Schools Teachers Learning Resource Guide; website: [www.outinschools.com](http://www.outinschools.com)

**General: [LexView 76.0 - Whose Children Are They, Anyway?](#) (March 15, 2012)**

- All court decisions referenced in this article can be found at the website of the Canadian Legal Information Institute, [www.canlii.org](http://www.canlii.org).